

REMARKS

Claims 1 through 5 are pending in the Office Action. The Office Action rejected claims 1-5 as being anticipated or obvious. Applicant has amended claim 1 to further clarify the invention as recited therein. Applicant respectfully submits that the amendment to claim 1 is based in the specification as originally filed, that such amendments do not add new matter, and requests entry thereof. Applicant respectfully requests reconsideration of claims 1 through 5 in view of the following remarks.

Please note that Applicant's remarks are presented in the order in which the issues were raised in the Office Action for the convenience and reference of the Examiner. In addition, Applicant requests that the Examiner carefully review each of the references discussed below to ensure that Applicant's understanding and discussion of the references is consistent with the Examiner. Further, the following remarks are not intended to be an exhaustive enumeration of the distinctions between any particular reference and the claimed design. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed design and that reference.

A. Section 102 Rejection

Paragraphs 2 and 3 of the Office Action rejected claims 1-3 and 5 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,894,923 to Hamstra et al. (hereinafter *Hamstra*). *Hamstra* discloses a package or set of labels consisting of any desired number of panels of labels. Each panel consists of a label stock which may be configured into one or more labels which can be peeled away from the panel. Each panel also includes backing paper onto which is adhered the label stock. The backing paper has a plurality of folding means (e.g., perforations) to allow the label to be folded (e.g., accorded) in a compact package. The package includes

means for supporting the package from a support structure. For example, a hole may be formed in each panel which holes align when the package is compressed so that the package can be suspended from a prong on a peg board. The package also includes securement means (e.g., a staple) that holds the panels together as a group. After the panels are formed and folded along the folding means, the panel is stapled and packed in a shipping container. Upon reaching a retail outlet, the packages are threaded onto a prong or other supporting structure.

The Office Action asserted that in the previous version of claim 1, that the language “adapted to” was not a positive limitation. By this amendment, Applicant has deleted this language from the claim, claim 1 now positively reciting that “at least a portion of the label being connected to the selectively adjustable device.” Furthermore, the Office Action asserted that “the device being selectively adjustable between a retracted position and an extended position” in the preamble of the claim was not given patentable weight. By this amendment, Applicant has amended the body of the claim to positively recite “a selectively adjustable device comprising a first portion and a second portion retractively coupled to the first portion.” Applicant respectfully submits that as amended, claim 1 is now allowable.

Support for the allowance of claim 1 is also found in related case U.S. Patent No. 6,786,514 from which this application was continued in which similar claims were allowed. Specifically, issued claim 6 of the ‘514 patent (originally, claim 12) recites:

6. An assembly for a label adapted to be used on a device, the assembly comprising:
 - a device comprising:
 - a first portion, and
 - a second portion coupled to the first portion such that the first portion and the second portion are selectively adjustable between a retracted position and an extended position; and
 - a label comprising:
 - a first end attached to the first portion of the device,
 - a second end attached to the second portion of the device, and
 - an intermediate portion being selectively adjustable between a retracted position, wherein a portion of the intermediate portion is obscured, and an extended position, wherein at least a portion of the intermediate portion that was obscured is clearly seen or easily distinguished.

Applicant notes that claim 6 was issued in view of the Hamstra reference without requiring any amendment. In the Notice of Allowability, mailed April 22, 2004, the Examiner stated as reasons for allowance, "None of the references cited separately or together teach the design of a label for use with a device, the device being selectively adjustable between a retracted position and an extended position, the label . . . adapted to be connected to the device" As such, Applicant respectfully submits that claim 1 is allowable for substantially the same reason that claim 6 of the '514 patent was considered allowable. In view of the foregoing, Applicant respectfully requests that the anticipation rejection with respect to claim 1 be withdrawn.

Claims 2-3 and 5 depend from independent claim 1 and thus incorporate the limitations thereof. As such, Applicant respectfully submits that claims 2-3 and 5 are allowable for substantially the same reasons that claim 1 is allowable and requests that the anticipation rejection with respect to claims 1-3 and 5 be withdrawn.

B. Section 103 Rejection

Paragraphs 4 and 5 rejected claim 4 as obvious under 35 U.S.C. 103(a) in view of *Hamstra*. The Office Action asserted that an intermediate portion comprising an S-shaped portion would have been an obvious matter of design choice. However, Applicant respectfully asserts that even if the label package taught by *Hamstra* were modified to have an S-shaped intermediate portion, *Hamstra* still does not teach the limitations of claim 1. For example, the Hamstra reference does not teach "a selectively adjustable device comprising a first portion and a second portion retractively coupled to the first portion." As such, Applicant respectfully requests that the obviousness rejection with respect to claim 4 be withdrawn.

C. Conclusion

In view of the foregoing, Applicant respectfully submits that claims 1-5 are in condition for allowance and favorable action is respectfully requested. In the event of any question, the Examiner is respectfully requested to initiate a telephone conversation with the undersigned.

Dated this 17th of October 2005.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sara D. Jones".

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